



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hugo's Cleaning Service, Inc.--Reconsideration

File: B-228396.6

Date: October 20, 1988

DIGEST

Request for reconsideration of decision denying protester's claim that agency acted in bad faith in determining awardee to be responsible is denied where protester does not show that original decision was based on error of fact or law.

DECISION

Hugo's Cleaning Service, Inc., requests reconsideration of our decision, Hugo's Cleaning Service, Inc., B-228396.4, July 27, 1988, 88-2 CPD ¶ 89, denying in part and dismissing in part its protest against the award of a contract under a two-step sealed bidding procurement conducted by the Air Force for custodial services at Cape Canaveral, Florida.

We deny the request for reconsideration.

The Air Force issued a request for technical proposals (RFTP), the first step of the procurement, on September 14, 1987, and an invitation for bids (IFB), the second step, on November 10. Hugo's argued that the Air Force's decision to award to Unified Systems, Inc., was made in bad faith since the firm was undergoing bankruptcy proceedings and therefore lacked the financial capability required by the solicitation. We disagreed with Hugo's since we found that the agency had in making its determination reasonably relied on a letter from a financial institution stating that if Unified was awarded the contract, it would advance up to \$800,000 in working capital for the performance of the contract. We further held that the fact that a contractor is undergoing bankruptcy does not require a finding of nonresponsibility and noted that a protest of an affirmative responsibility determination must be based on a showing of possible fraud or bad faith on the part of the contracting officials. Security America Services, Inc., B-225469, Jan. 29, 1987, 87-1 CPD ¶ 97.

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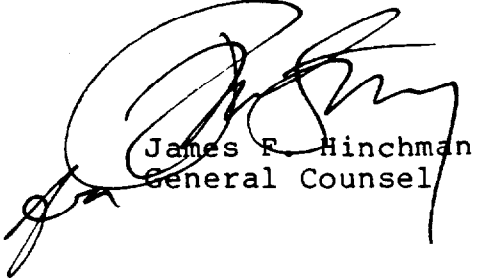
In requesting that we reconsider our decision, Hugo's asserts that it is incumbent upon the contracting officer to reevaluate Unified's responsibility. According to the protester, bankruptcy filings indicate that Unified's financing for this contract needs to be approved by the creditors and based on the dates in the filing, it appears that this has not occurred. Hugo's argues that this approval constitutes a condition precedent to the validity of the letter of financial commitment and therefore the agency's reliance on the commitment is in violation of Federal Acquisition Regulation (FAR) § 9.104-3(b) which requires that a financial commitment be in existence at the time of award in order to constitute evidence of financial responsibility.

Concerning FAR § 9.104-3(b), that regulation only lists examples of acceptable evidence of a prospective contractor's ability to obtain financial resources and does not contain an explicit requirement for any particular type of financial commitment. Whether the bankruptcy proceedings made the firm's financial commitment contingent and, if so, whether that contingency affected its capability, is a matter to be considered by the contracting officer in exercising his business judgment as to whether a prospective contractor has the requisite financial capability. The agency was well aware of Unified's bankruptcy problems when it made its affirmative responsibility determination, which was based in large part on the financial commitment letter. While it is clear that the protester believes that the agency is taking an unreasonable risk, it has not shown that the agency's judgment in this regard was either the result of fraud or bad faith or was without a rational basis. We do not believe that the protester's continued updating this Office as to the on-going bankruptcy proceedings is relevant to the validity of the award, which has already been made. We note in this regard that so far, Unified has performed satisfactorily with no financial problems.

In its request for reconsideration, the protester has essentially reiterated a number of other arguments raised in its original protest. We have reviewed our decision and do not find that it was based on an error of fact or law and therefore we have no basis on which to disturb the decision.

See Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1988); A&E Industries, Inc., et al.--Reconsideration, B-226997.8 et al., Aug. 17, 1987, 87-2 CPD ¶ 163.

The request for reconsideration is denied.



James F. Hinchman
General Counsel